

officers which exceed their respective contracting authority as well as unauthorized commitments made by individuals lacking contracting authority.

(1) At field stations, for supplies, services and construction, the approving authority is the director of the field facility concerned.

(2) For central office contracting officers, for supplies, services, and construction, the approving authorities are the heads of the administrations and directors of the staff offices concerned, and the Deputy Assistant Secretary for Acquisition and Materiel Management.

(3) For acquisitions of leasehold interest in real property the approving authority is:

(i) The Chief Facilities Management Officer, Office of Facilities Management, for 1-5,000 square feet, and for 1-100 parking spaces costing less than \$50,000 per annum.

(ii) The Assistant Secretary for Management for 5,001-20,000 square feet, and for parking spaces exceeding 100 which cost less than \$100,000 per annum.

(iii) The Deputy Secretary for 20,001 square feet and above, and for parking spaces exceeding 100 which cost more than \$100,000 per annum.

(4) This approval authority shall not be redelegated.

(b) Requests received by contracting officers for ratification of commitments made by personnel lacking contracting authority shall be processed as follows:

(1) The individual who made the unauthorized contractual commitment shall furnish the contracting officer all records and documents concerning the commitment and a complete written statement of facts, including, but not limited to, a statement as to why the procurement office was not utilized, why the proposed contractor was selected and a list of other sources considered, description of work to be performed or products to be furnished, estimated or agreed contract price, citation of appropriation available, and a statement of whether the contractor has commenced performance.

(2) The contracting officer will review the file and forward it to the approving authority specified in para-

graph (a) of this section with any comments or information which should be considered in evaluation of the request for ratification. If legal review is desirable, the approving authority will coordinate the request for ratification with the Office of the General Counsel or the District Counsel, as appropriate.

(3) If ratification is authorized, the file will be returned to the contracting officer for issuance of a purchase order or contract, as appropriate.

(c) In the case of otherwise proper contract awards made by contracting officers in excess of the limits of their delegated authority, the need for ratification will be brought to the attention of the head of the contracting activity. That individual will take such action as may be indicated to preclude future instances of such awards.

[54 FR 31962, Aug. 3, 1989, as amended at 61 FR 11585, Mar. 21, 1996; 63 FR 69217, Dec. 16, 1998]

**801.602-70 Legal/technical review requirements to be met prior to contract execution.**

(a) The following categories of proposed contracts and agreements will be reviewed and concurred in by the Office of Acquisition and Materiel Management prior to contract execution. (Additionally, the Office of Acquisition and Materiel Management may, when considered necessary, request preaward technical review regardless of dollar value). Office of General Counsel legal reviews of such proposed contracts and agreements will be performed when requested and determined necessary by the Office of Acquisition and Materiel Management. (Excluded from this requirement is the National Acquisition Center which will perform its own technical reviews at the thresholds herein prescribed. The National Acquisition Center will receive preaward legal review of solicitation from the General Counsel staff located in Hines, Illinois).

(1) All negotiated and sealed bid contracts (except as specified in (a)(2) and (a)(3)) exceeding \$250,000 in either appropriated or nonappropriated funds. This includes indefinite quantity contracts when expenditures of \$250,000 or more can reasonably be expected, and multiyear contracts in which \$250,000

or more will be expended over the life of the contract. (Note also that multiyear contracts also require review any time the cancellation ceiling exceeds 20 percent of the contract amount (see 817.1)).

(2) All fixed price, sealed bid construction contracts involving \$500,000 or more in either appropriated or unappropriated funds.

(3) All 8(a) contracts exceeding \$500,000.

(4) All proposed agreements and contracts coming within the purview of one or more of the following:

(i) Contracts for insurance.

(ii) Utility service agreements involving \$50,000 or more.

(iii) Contracts for consulting services (see subpart 837.2) and management and professional services (see 837.271).

(iv) Contracts for research or research and development involving \$50,000 or more.

(v) Automatic data processing equipment, when purchased from other than a Federal Supply Schedule contract, involving \$50,000 or more.

(vi) Competitive contracts exceeding \$1.5 million and noncompetitive contracts exceeding \$500,000 for the acquisition of scarce medical specialist services acquired under the authority of 38 U.S.C. 7409.

(vii) Competitive contracts exceeding \$1.5 million and noncompetitive contracts exceeding \$500,000 for the acquisition of health-care resources acquired under the authority of 38 U.S.C. 8151-8153.

(viii) Agreements with other Federal agencies regardless of dollar value. Those agreements of \$5,000 or more will be forwarded to General Counsel for legal review. VA/DoD Sharing Agreements executed under the authority of Public Law 97-174 (38 U.S.C. 8111) and sections 201-206 of Public Law 102-585 are exempt from review by the Office of Acquisition and Materiel Management; however, they must be approved in accordance with VA Manual M-1, Part I, Chapter 1, Section XI.

(ix) Contracts for ADP software exceeding \$10,000.

(x) ADP software licensing agreements for ADP software exceeding \$10,000 (all software licensing agreements require technical review).

(5) All proposed letter contracts and ensuing formal contracts involving expenditures of \$5,000 or more.

(6) Any proposed agreement that is unique, novel or unusual (including all consignment agreements, regardless of anticipated dollar value—except those established and provided in Federal Supply Schedule Contracts).

(7) Step One of two-step sealed bid procurements when the anticipated value is more than \$200,000.

(b) The following categories of proposed contractual actions require the concurrence of the General Counsel:

(1) Contract modifications, terminations (including final decision (cure) letters), disputes and claims in excess of \$25,000 (\$50,000 for contracts awarded by the Office of Facilities Management).

(2) Contract modifications granting a time extension of more than 20 days.

(3) Assignment of claims.

(4) Proposed awards to other than the low evaluated bidder/offeror.

(c) In addition to the requirements of paragraphs (a) and (b) of this section, the following require review and concurrence of the General Counsel:

(1) Changes or revisions to all contract clauses.

(2) Changes or revisions to prescribed VA contract forms.

(d) Utility construction and connection contracts which are developed in the Office of Facilities Management and cost \$50,000 or more will be reviewed by General Counsel and the Chief Facilities Management Officer, Office of Facilities Management.

(e) When legal assistance is requested by any Central Office contracting activity, the contracting officer will brief the General Counsel regarding the facts and points of issue to facilitate prompt resolution.

(f) With regard to solicitations and contracts awarded and administered by the Central Office contracting activities, the General Counsel will be requested to participate in conferences where it is expected that legal problems or contract provisions will be considered, and in meetings attended by legal representatives of private parties or other Government agencies. Assigned procurement counsel will be requested to participate in the drafting

## Department of Veterans Affairs

801.602-71

of correspondence involving controversial or sensitive contractual matters of a significant nature.

(g) All protests against award will be reviewed by General Counsel in accordance with the provisions specified in 48 CFR 833.103.

(h) Excluded from these legal review requirements are:

(1) Agreements, licenses, easements, or deeds dealing with management, sale, or lease of properties acquired by VA as a result of liquidation of guaranteed, direct, acquired or vendee loans.

(2) Orders or contracts for procurement of leased telecommunications systems, installation of and changes to telephone PBX systems at individual Department of Veterans Affairs locations or orders issued under GSA area-wide contracts with the American Telephone and Telegraph Company and local telephone companies.

(i) If a change order (unilateral agreement) is essential for the logical process of the contract, the Office of Acquisition and Materiel Management, Acquisition Review Division shall be called prior to issuing the document. (This requirement does not apply to change orders issued by the Office of Facilities Management.)

(j) The following apparent low responsive and responsible bids/offers with the respective solicitations will be submitted for the review of the Deputy Assistant Secretary for Acquisition and Materiel Management, Acquisition Review Division, prior to award:

(1) Negotiated contract actions in the Office of Facilities Management which exceed \$2 million.

(2) Bids/offers for construction contracts to be awarded by VHA facilities which exceed \$5 million.

(3) Bids/offers for service contracts, including A/E, which exceed \$2 million, and

(4) Bids/offers for supply contracts which exceed \$5 million in total evaluated cost (excluding FSS contracts awarded by VA National Acquisition Center).

[49 FR 12583, Mar. 29, 1984, as amended at 50 FR 791, Jan. 7, 1985; 51 FR 23066, June 25, 1986; 52 FR 28559, July 31, 1987; 52 FR 49016, Dec. 29, 1987; 54 FR 31963, Aug. 3, 1989; 55 FR 31391, Aug. 2, 1990; 58 FR 31914, June 7, 1993; 61 FR 11585, Mar. 21, 1996; 68 FR 3468, Jan. 24, 2003]

### 801.602-71 Processing contracts for legal/technical review.

(a) All competitively awarded solicitations requiring legal and/or technical review will have such reviews completed prior to opening of bids or proposals. The contracting officer will fully evaluate technical and legal review comments prior to opening bids or proposals. Potential bidders/offers will be advised of changes to the solicitation by amendment and afforded sufficient time for evaluation prior to opening of bids or offers.

(b) *Veterans Health Administration (VHA) Field Facilities, VA National Acquisition Center.* (1) Proposed contracts or agreements specified in 801.602-70(a) (1), (2), (3), (4) (iii) through (v), (5), (6) and (7) will be forwarded by the contracting officer directly to the Deputy Assistant Secretary for Acquisition and Materiel Management, Acquisition Review Division. The Deputy Assistant Secretary for Acquisition and Materiel Management will review the submissions and when applicable, forward them directly to the General Counsel (025).

(2) Proposed contracts and agreements for scarce medical specialist services or for the mutual use or exchange of use of health-care resources, as specified in 801.602-70(a)(4)(vi) and (a)(4)(vii), will be forwarded to Central Office in accordance with Veterans Health Administration directives and VA Manual M-1, Part 1, Chapter 34, for review and submission to the Office of the General Counsel (025).

(3) Proposed interagency agreements specified in 801.602-70(a)(4)(viii) will be forwarded by the approving official to the Deputy Assistant Secretary for Acquisition and Materiel Management, Program Development and Evaluation Division. The Deputy Assistant Secretary for Acquisition and Materiel Management will review the submissions and forward them directly to the General Counsel (025).

(4) Proposed facility-level modification specified in 801.607-70(b) will be forwarded by the contracting officer to General Counsel (025), through the Deputy Assistant Secretary for Acquisition and Materiel Management, Acquisition Review Division.